IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 951 OF 1987

1) Smt. Savita Nandkumar Hukeri,)
age 44, Occupation Nil,)
Resident of Opp. Aahilyadevi)
Holkar Udyan, Shivaji Nagar,)
Barshi, Dist. Solapur.)
2) Kum. Maithili Nandkumar)
Hukeri, Aged 24 years,)
Occupation education.)
3) Kum. Mandar Nandkumar Hukeri,)
Age 23, Occupation Education,)
Nos.2 and 3 residing at Jay)
Shirganga Co-operative)
Housing Society, A-4, Mayur)... Appellants.
Colony, Kothrud, Pune-29.)..(Orig.Applicants)

Versus

1) The State of Maharashtra)
(Collector of Satara))
2) Deputy Engineer, Koyna Dam)
Hydro Electric Project Sub)
Division No.1 Koynanagar,)
Taluka Patan, Dist. Satara.)

3) Hambirrao Narayan Kale, aged)
38, Occupation Service,)
Deputy Engineer, Koynanagar,)
Taluka Patan, Dist. Satara.)
4) Director of Insurance,)
Maharashtra State, New)
Administrative Building,)
17th Floor, Opp.Mantralaya,)... Respondents.
Bombay. ... ...)..(Orig.Opponents)

Mr. Uday Warunjikar for the Appellants.
Mr. K. K. Tated, AGP for Respondent Nos.1 and 4.

CORAM : ANOOP V. MOHTA, J.

DATED : 29TH NOVEMBER, 2005.

J U D G E M E N T :

This is an appeal by the original applicants / appellants herein, who have challenged the impugned judgment and order dated 18th November, 1986 passed by the Motor Accidents Claims Tribunal, Satara (the Tribunal) in Claim Petition No. 178 of 1984 and claimed enhanced compensation basically on the foundation that the learned Tribunal failed to consider (a) proper calculation of dependency and (b)

not granted the compensation for loss of consortium, love and affection, which are otherwise available and/or should have awarded in such manner.

2. Heard learned Counsel for the parties. There is no dispute in the present matter that this order has remained unchallenged so far as respondents are concerned. Nobody represented respondent Nos.2 and 3. Learned Asstt. Government Pleader Mr. Tated appears for respondent Nos.1 and 4.

3. While assessing the compensation, the learned Tribunal has rightly taken note of various facts including the ground of appointment of applicant No.1, after the death of the deceased i.e. her husband. On the date of award, she was getting Rs.750/- per month in all. There is no further dispute that after the death of a Government employee as per the Group Insurance Scheme, certain amount would be payable to the heirs. The Tribunal while granting the compensation has taken that amount into consideration and accordingly granted claims in the facts and circumstances.

4. Learned Counsel appearing for the claimant,

basically has relied on **General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Susamma Thomas (Mrs.) and others** ((1994) 2 SCC 176) and **Sarla Dixit (Smt.) and Anr. vs. Balwant Yadav & Ors.,** ((1996) 3 SCC 179) and raised contention about the value of future promotion of the deceased, who admittedly, was entered in the service as the Junior Engineer and was promoted as Deputy Engineer in the year 1981. The tribunal has considered this aspect by observing "I think fairly it can be conceded as correct that he would have got future promotions also". There is no challenge made to this finding. Therefore, what is required to be considered at this stage is the entitlement of the claimant based on his future promotion, if any. Both the judgments cited by the appellants have dealt with this aspect and based on the material available on the record accepted the foundation of doubling the amount of basic salary of the deceased on the date of accident, while passing the final order. In both these matters, after doubling the amount of basic salary, the compensation was awarded.

5. Learned Counsel appearing for the respondents, however, pointed out that on record there is no

substantial material to support this submission except the averments as referred in the evidence of PW-1 to the extent "In due course, he would have been Executive Engineer and Superintending Engineer". Except this, there is no material placed on the record to justify the future salary and/or promotional salary of the Dy. Engineer in the year 1981. The fact that there is a observation which remained unchallenged of future promotion can not be overlooked. The formula as adopted by the Apex Court in the aforesaid two decisions if taken note of, the salary of the deceased could be treated as Rs.3,200/- as a foundation for assessing the compensation. But at the same stroke, the fact of salary of the Applicant Smt. Savita which was admittedly at the relevant time Rs.750/- cannot be denied. On the strength of this, it cannot be over looked that she may get more income or promotion out of the said job which she got on the compassionate ground. If one talk about the salary of the deceased as per this formula the salary of the wife - applicant also needs to be considered on this foundation. There is no such material on the record on that aspect. However, if we apply the same formula can be taken to the extent of multiplying the salary of applicant - Savita. The salary then on the same foundation comes

to near about Rs.1,500/-. Deducting the amount of Rs.1,500/- from Rs.3,200/- would come to Rs.1,700/-.

6. The trial court has rightly taken Rs.1,600/- as pay of the deceased. After considering the deduction, the net amount calculated was Rs.1,200/- to Rs.1,300/- per month. The learned Tribunal has calculated the dependency of the applicants on the basis of practically 50% of the above amount. I am of view that in the facts and circumstances the deduction be 1/3rd of the Rs.1,200/-. Calculation based on that amount comes to Rs.900/- per month. As the learned Tribunal has also taken judicial notice of various aspect of future promotion and Group Insurance Scheme, I see there is no reason now to discard the same. Based on this the amount comes to Rs.900/- per month multiplied by 12, comes to Rs.10,800/- per year. The 16 multiplier is reasonable as accepted and correct in the present case and hence the total comes to Rs.1,72,800/-.

7. Learned Advocate appearing for the respondents further contended that the Tribunal has granted 16 multiplier on higher side. The grant of interest at the rate of 12% p.a. is also on higher side. In **T.**

N. State Transport Corporation Limited vs. S. Rajapriya and Ors., ((2005) 6 SCC 236), the Apex Court applied the multiplier of 12 and also reduced the interest from 9% p.a. to 7.50% p.a. taking note of the prevailing rate of interest on bank deposits. Learned Advocate therefore contended that this cannot be overlooked while considering or granting enhanced compensation. The fact that there is no challenge made by the respondents, I am not inclined to interfere with the multiplier as awarded as also the interest as awarded by the learned Tribunal so far as the amount which was already awarded in favour of the applicant. At this stage, I am inclined to grant interest at the rate of 7.5% p.a. taking note of the observation made by the Apex Court in the case of T. N. State Transport Corporation Limited **(supra)**. While passing the order, this aspect cannot be overlooked basically on additional compensation.

8. There is no dispute that the Tribunal failed to award the amount of compensation on the loss of companionship. It is settled law so far as the loss of companionship is concerned. In such matters, loss of consortium is always granted to the claimant. Learned Counsel appearing for the appellant has relied

on the **Srisailam Devastaram vs. Bhavani Pramilamma & Ors.,** (AIR 1983 AP 297). The law therefore need no further discussion. The loss of companionship by the wife or husband cannot be overlooked. It is difficult to compensate by any such figure. Since in view of the observation made by the Court and in view of the practice and settled precedent, I am inclined to grant loss of companionship, love and affection, which also needs the same treatment in view of the settled precedent on the same foundation. In the circumstances, I am inclined to grant Rs.10,000/- towards love and affection and Rs.15,000/- towards loss of consortium.

9. In view of this, I am modifying the impugned order and judgement to the extent that the original Opponents are jointly and severally liable to pay amount of Rs.1,72,800/- plus Rs.10,000/- towards love and affection and Rs.15,000/- towards loss of consortium, totalling to Rs.1,97,800/- to the original applicant/claimants together with interest at the rate of 7.5% per annum from the date of application till the whole amount is paid. This will be subject to deduction and adjustment of the amount if already received. This will also be subject to proportionate

distribution of amount as awarded. The rest of the order of the Tribunal is maintained.

10. The present appeal is allowed accordingly. There shall be no order as to costs.

Sd/-

(ANOOP V. MOHTA, J.)